

JURISDICTION

On December 5, 2007, Plaintiff filed an application for supplemental security income, alleging disability beginning January 1, 2005. Tr. 20; 110. Plaintiff reported that his ability to work was limited by seizures, diabetes, deafness in his right ear, blurred vision and a dislocated arm. Tr. 115. Plaintiff's claim was denied initially and on reconsideration, and he requested a hearing before an administrative law judge (ALJ). Tr. 61-95. A hearing was held on July 14, 2010, at which vocational expert Jinny Lou Lawson, and Plaintiff, who was represented by counsel, testified. Tr. 34-60. ALJ Caroline Siderius presided. Tr. 34. The ALJ denied benefits July 28, 2010. Tr. 20-29. The instant matter is before this court pursuant to 42 U.S.C. § 405(g).

STATEMENT OF THE CASE

The facts of the case are set forth in detail in the transcript of proceedings and are briefly summarized here. At the time of the hearing, Plaintiff was 51 years old. Tr. 41. He attended school through the eighth grade, was in special education, and eventually obtained his GED. Tr. 41; 49. He estimated he has been convicted of six or seven DUIs, and he had been incarcerated on a felony sexual assault conviction. Tr. 42. He lives with his father in a trailer. Tr. 43; 46.

Plaintiff has worked in various jobs in agriculture, but he testified that he can no longer work due to problems with his lower back. Tr. 43-44; 105-09. He has undergone surgery on his back, but he still has pain in both his legs and back. Tr. 44. Plaintiff said can walk up to a quarter of mile, but he has to take a break, and he can stand for 15 minutes before he experiences pain in his

1 legs and back and must rest. Tr. 45; 50.

2 Plaintiff testified that he sleeps most of the day, and his
3 household chores are handled by his niece and his father. Tr. 46.
4 Plaintiff testified that he has experienced symptoms of depression
5 and anxiety his entire life, but the symptoms have improved since he
6 began medication. Tr. 47. He attempted suicide in 2009, and
7 reports he still experiences suicidal thoughts regularly. Tr. 51.
8 Plaintiff testified that since he stopped using street drugs in
9 2008, he has suffered one "minor relapse." Tr. 52. He testified
10 that he has not drank alcohol in a couple of years. Tr. 43.

11 ADMINISTRATIVE DECISION

12 At step one, the ALJ found that Plaintiff had not engaged in
13 substantial gainful activity since December 5, 2007. Tr. 22. At
14 step two, she found Plaintiff had the severe impairments of chronic
15 low back pain status post low back surgery, history of Hepatitis C
16 in remission/dormant, and an affective disorder (depression). Tr.
17 22. At step three, the ALJ determined Plaintiff's impairments,
18 alone and in combination, did not meet or medically equal one of the
19 listed impairments in 20 C.F.R., Subpart P, Appendix 1 (20 C.F.R. §§
20 416.920(d), 416.925 and 416.926). Tr. 23. The ALJ found Plaintiff
21 has the residual functional capacity ("RFC") to perform a "somewhat
22 restricted light exertion" range of work:

23 Physically, the claimant is limited as follows: can
24 lift/carry 20 pounds occasionally and 10 pounds
25 frequently; can sit up to six hours a day; can stand and
26 walk up to six hours a day; and can occasionally stoop and
27 crouch. Mentally, the claimant is limited as follows:
28 limited to simple, but not detailed, repetitive 1 to 3
step tasks; must be given instructions either verbally or
written; and only occasional contact with coworkers and
the public. (See Ex. 5F/1, 22F/1,3) Consequently, the
claimant has the residual functional capacity to perform
a somewhat restricted light exertion.

1 Tr. 24.

2 In step four findings, the ALJ found Plaintiff's statements
3 regarding pain and limitations were not credible to the extent they
4 were inconsistent with the RFC findings. Tr. 25-26. Also, the ALJ
5 found that Plaintiff is unable to perform past relevant work. Tr.
6 27. The ALJ concluded that jobs exist in significant numbers in the
7 national economy that Plaintiff can perform, and cited
8 "representative occupations" such as housekeeping cleaner and
9 document preparer. Tr. 28.

10 STANDARD OF REVIEW

11 In *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir. 2001), the
12 court set out the standard of review:

13 A district court's order upholding the Commissioner's
14 denial of benefits is reviewed *de novo*. *Harman v. Apfel*,
15 211 F.3d 1172, 1174 (9th Cir. 2000). The decision of the
16 Commissioner may be reversed only if it is not supported
17 by substantial evidence or if it is based on legal error.
18 *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999).
19 Substantial evidence is defined as being more than a mere
20 scintilla, but less than a preponderance. *Id.* at 1098.
21 Put another way, substantial evidence is such relevant
22 evidence as a reasonable mind might accept as adequate to
23 support a conclusion. *Richardson v. Perales*, 402 U.S.
24 389, 401 (1971). If the evidence is susceptible to more
25 than one rational interpretation, the court may not
26 substitute its judgment for that of the Commissioner.
27 *Tackett*, 180 F.3d at 1097; *Morgan v. Commissioner of*
28 *Social Sec. Admin.*, 169 F.3d 595, 599 (9th Cir. 1999).

29 The ALJ is responsible for determining credibility,
30 resolving conflicts in medical testimony, and resolving
31 ambiguities. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th
32 Cir. 1995). The ALJ's determinations of law are reviewed
33 *de novo*, although deference is owed to a reasonable
34 construction of the applicable statutes. *McNatt v. Apfel*,
35 201 F.3d 1084, 1087 (9th Cir. 2000).

36 It is the role of the trier of fact, not this court, to resolve
37 conflicts in evidence. *Richardson*, 402 U.S. at 400. If evidence
38 supports more than one rational interpretation, the court may not

1 substitute its judgment for that of the Commissioner. *Tackett*, 180
2 F.3d at 1097; *Allen v. Heckler*, 749 F.2d 577, 579 (9th Cir. 1984).
3 Nevertheless, a decision supported by substantial evidence will
4 still be set aside if the proper legal standards were not applied in
5 weighing the evidence and making the decision. *Browner v. Secretary*
6 *of Health and Human Services*, 839 F.2d 432, 433 (9th Cir. 1988). If
7 substantial evidence exists to support the administrative findings,
8 or if conflicting evidence exists that will support a finding of
9 either disability or non-disability, the Commissioner's
10 determination is conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-
11 1230 (9th Cir. 1987).

12 SEQUENTIAL PROCESS

13 The Commissioner has established a five-step sequential
14 evaluation process for determining whether a person is disabled. 20
15 C.F.R. §§ 404.1520(a), 416.920(a); see *Bowen v. Yuckert*, 482 U.S.
16 137, 140-42 (1987). In steps one through four, the burden of proof
17 rests upon the claimant to establish a prima facie case of
18 entitlement to disability benefits. *Tackett*, 180 F.3d at 1098-99.
19 This burden is met once a claimant establishes that a physical or
20 mental impairment prevents him from engaging in his previous
21 occupation. 20 C.F.R. §§ 404.1520(a)(4), 416.920(a)(4). If a
22 claimant cannot do his past relevant work, the ALJ proceeds to step
23 five, and the burden shifts to the Commissioner to show that (1) the
24 claimant can make an adjustment to other work; and (2) specific jobs
25 exist in the national economy which claimant can perform. *Batson v.*
26 *Commissioner of Social Sec. Admin.*, 359 F.3d 1190, 1193-94 (2004).
27 If a claimant cannot make an adjustment to other work in the
28 national economy, a finding of "disabled" is made. 20 C.F.R. §§

1 404.1520(a)(4)(I-v), 416.920(a)(4)(I-v).

2 **ISSUES**

3 The question presented is whether substantial evidence exists
4 to support the ALJ's decision denying benefits and, if so, whether
5 that decision is based on proper legal standards. Plaintiff
6 contends that the ALJ erred by failing to properly weigh the opinion
7 evidence, by finding Plaintiff lacked credibility and by failing to
8 identify specific jobs that Plaintiff could perform. ECF No. 18 at
9 10-20.

10 **DISCUSSION**

11 Plaintiff contends that the ALJ erred by failing to properly
12 weigh the opinion evidence.² In analyzing Plaintiff's credibility,
13 the ALJ briefly addressed some of the medical records. Tr. 26.
14 However, the ALJ failed to specifically address and discuss the
15 conflicting medical opinion evidence, and the ALJ failed to explain
16 how the various opinions were weighed, and why certain opinions were
17 rejected. Instead, the ALJ addressed the medical opinion evidence
18 in two sentences:

19 As for the opinion evidence, the record does contain
20 physical general assistance evaluations in which examiners
21 have indicated that since [the] application date[,] the
22 claimant has been able to perform physical work activity
23 at least commensurate with at least light work (Ex.
24 21F/20-23). The record does evidence that the claimant
25 has received additional treatment resulting in significant
26 objective improvements.

27 Tr. 27. The Ninth Circuit has "made it clear that the medical
28 opinions of a claimant's treating physicians are entitled to special

29 ²Because this issue is dispositive, the court does not address
30 Plaintiff's other contentions.

1 weight and that, if the ALJ chooses to disregard them, 'he must set
2 forth specific, legitimate reasons for doing so, and this decision
3 must itself be based on substantial evidence.'" *Embrey v. Bowen*,
4 849 F.2d 418, 421 (9th Cir. 1988), quoting *Cotton v. Bowen*, 799 F.2d
5 1403, 1408 (9th Cir. 1986). "The ALJ can meet this burden by
6 setting out a detailed and thorough summary of the facts and
7 conflicting clinical evidence, stating his interpretation thereof,
8 and making findings." *Cotton*, 799 F.2d at 1408. Even if a treating
9 physician's opinion is controverted, the ALJ must provide specific,
10 legitimate reasons for rejecting it. *Id.*

11 In this case, the record reveals treating and examining medical
12 provider opinions that indicate Plaintiff was not capable of light
13 work, and in some opinions, not capable of sustaining full time
14 employment. For example, on November 5, 2007, Christopher J. Clark,
15 M.Ed., assessed Plaintiff with marked limitations in expression of
16 anger, physical complaints and global illness. Tr. 180. Mr. Clark
17 also assessed Plaintiff with a marked limitation in social
18 functioning, along with three moderate limitations related to the
19 ability to respond appropriately and tolerate a work environment.
20 Tr. 181. Additionally, Mr. Clark opined that Plaintiff had moderate
21 limitations in four of five cognitive factors. Tr. 181.

22 Similarly, on January 9, 2008, Vivek K. Shah, M.D., Plaintiff's
23 treating physician, opined Plaintiff was capable of performing only
24 sedentary work due to back pain and Hepatitis C. Tr. 202-04.
25 Additional medical records reveal assessments that indicate
26 Plaintiff has severe and moderate limitations related to his ability
27 to perform light work, and some records assess limitations related
28 to Plaintiff's ability to sustain gainful employment. See, e.g.,

1 Tr. 325-27; 335-37; 341-43; 346; 352-55; 361-66.

2 In interpreting the evidence and developing the record in a
3 social security disability case, the ALJ need not discuss every
4 piece of evidence, but the ALJ must explain why significant
5 probative evidence has been rejected. *Vincent v. Heckler*, 739 F.2d
6 1393, 1394-95 (9th Cir. 1984); *Howard v. Barnhart*, 341 F.3d 1006,
7 1012 (9th Cir. 2003). The ALJ failed to explain why she rejected
8 significant probative evidence from several medical sources that
9 indicate Plaintiff is incapable of light work. Where a material
10 conflict in the evidence is present, only the ALJ can resolve it.
11 See *Richardson v. Perales*, 402 U.S. 389, 28 L. Ed. 2d 842, 91 S.Ct.
12 1420 (1971). This case must be remanded for the ALJ to provide a
13 specific and thorough summary of the facts and conflicting medical
14 evidence, along with her interpretation of, and findings related to
15 the significant, probative medical evidence in this case.

16 CONCLUSION

17 Having reviewed the record and the ALJ's findings, the court
18 concludes the ALJ's decision is not supported by substantial
19 evidence and is based on legal error. On remand, the ALJ shall
20 evaluate and explain the weight given to the opinions of the medical
21 sources, and, if necessary, provide legally sufficient reasons for
22 rejecting the opinions. Additionally, the ALJ will revisit
23 Plaintiff's credibility and specifically identify the testimony, if
24 any, that is not credible or that undermines Plaintiff's subjective
25 complaints in accord with *Vertigan v. Halter*, 260 F.3d 1044, 1050
26 (9th Cir. 2001). Finally, the ALJ will reevaluate her determination
27 at step four and if necessary, make new step five findings. The
28 decision is therefore **REVERSED** and the case is **REMANDED** for further

1 proceedings consistent with this opinion. Accordingly,

2 **IT IS ORDERED:**

3 1. Plaintiff's Motion for Summary Judgment, **ECF No. 17**, is
4 **GRANTED** and the matter is **REMANDED** to the Commissioner for
5 additional proceedings.

6 2. Defendant's Motion for Summary Judgment, **ECF No. 22**, is
7 **DENIED**.

8 3. An application for attorney fees may be filed by separate
9 motion.

10 The District Court Executive is directed to file this Order and
11 provide a copy to counsel for Plaintiff and Defendant. Judgment
12 shall be entered for Plaintiff, and the file shall be **CLOSED**.

13 DATED June 6, 2013.

14
15 S/ CYNTHIA IMBROGNO
16 UNITED STATES MAGISTRATE JUDGE
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